Statement of Congressman Pete Stark at the Health Subcommittee Mark-Up of H.R. 4157

Tuesday, 23 May 2006

U.S. Representative Pete Stark (D-CA), Ranking Democrat on the Ways and Means Health Subcommittee, issued the following statement during today's mark-up of H.R. 4157.

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STATEMENT OF CONGRESSMAN PETE STARK AT THE HEALTH SUBCOMMITTEE MARK-UP OF HR 4157

WASHINGTON – U.S. Representative Pete Stark (D-CA), Ranking Democrat on the Ways and Means Health Subcommittee, issued the following statement during today's mark-up of H.R. 4157.

"Madam Chairman, you will not be surprised to hear that I am disappointed with the product we have before us today. As we both know, you and I and our staff have gone back and forth numerous times since last July about various controversial provisions in your bill. Although we have offered suggestions, annotated language and compromises, you have consistently rejected the opportunity to work together on this issue. In fact, we didn't even receive the manager's amendment until last night.

"This is unfortunate, because health information technology should be a no-brainer for bipartisanship. It was in the Senate – S. 1418 passed unanimously, even though there had been several competing products. How often does that happen around here? And frankly, although the Senate bill does not go as far as I would like, I would greatly prefer it over the bill we are marking up today.

"To begin with, the bill you have crafted does not bring us closer to a nationwide interoperable health system. First, the legislation codifies the Office of the National Coordinator for Health Information Technology, but then quickly eliminates any actual authority for this office or the Secretary to develop and approve standards for interoperability, and or to establish certification processes so that providers can be assured that what they're buying meets these standards. Instead, you require the National Coordinator to defer to the private sector to carry out these functions "to the maximum extent possible."

"As far as I can tell, this legislation simply sets someone up with a fancy government office, title and salary, but lets the big health IT vendors make all of the rules. In the 15-plus years that vendors and other interested – but conflicted -- parties have been running the show, we are no closer to having an interoperable health IT system. This is a classic example of a market failure that will not be resolved without federal leadership. The longer we allow the vendors and others to flounder, the longer patients, physicians, other providers and the U.S. health system will have to wait to realize the benefits of improved health information technology.

"Not only does this bill squander an opportunity for federal leadership, it also includes provisions that actually make things worse. Creating statutory exceptions to the physician self-referral and anti-kickback laws is unnecessary and dangerous. CMS and OIG are still in the process of finalizing their rule on this topic. Although I have offered to work with you to direct these agencies to craft a tightly constructed exception via rule-making, you have rejected the offer, instead developing broad statutory exceptions that would foster fraud and abuse in the Medicare program.

"CBO has indicated these provisions will increase Medicare's spending because they will generate more waste, fraud and abuse. I have heard that the Administration has reached a similar conclusion. Anyone who considers themselves a steward of taxpayer resources should vote to strike this section.

"Finally, instead of strengthening protections for privacy and confidentiality in an electronic environment, your bill sets up a process to further erode these protections by setting in motion a process that could lead to pre-emption state laws. Given the sensitivity of the information providers will be sharing and relative ease with which a breach can occur, we have an obligation to increase the public's confidence that information will be protected. Settling for the lowest common denominator should not be a subject of discussion, much less the default position.

"Madam Chair, I maintain that the only way we will ever have a comprehensive, interoperable electronic health system is if we: (1) put something – anything – in place by a date certain that can begin to be used and improved upon, (2) underwrite the cost to acquire and support systems that meet uniform standards, and (3) require providers to use these systems.

"As I understand it, standards are dynamic, not static. Once a standard is approved it will evolve and change over time as

it gets tested in an operating environment. This happens when the people using the systems recognize deficiencies and areas for improvement, and necessary upgrades are made. No operating system will ever be perfect.

“We should not let the “perfect be the enemy of the good.” We have to start somewhere, or we’ll have nothing to improve upon.

“Sadly, the legislation before us today is a missed opportunity. If enacted, I fear we’ll waste a lot of time and money, and still be talking about these issues 10 years from now, instead of making improvements to an existing, interoperable system.”

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